



General Assembly

Distr.: General
8 May 2002
English
Original: English/Spanish

Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

Gibraltar

Working paper prepared by the Secretariat*

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* This document is being submitted on 8 May 2002 to allow for inclusion of up-to-date information about the Territory.



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I. General¹

1. Gibraltar is a narrow peninsula extending southward from the south-west coast of Spain, to which it is connected by an isthmus about 1.6 kilometres long. The Spanish port of Algeciras lies 8 kilometres across the bay to the west; the continent of Africa is situated 32 kilometres across the Strait of Gibraltar to the south. According to the United Kingdom of Great Britain and Northern Ireland, the area of Gibraltar is 5.86 square kilometres, and according to Spain it is 4.8 square kilometres.

2. The latest census of Gibraltar, taken on 14 October 1991, assessed the Territory's civilian population at 26,703, of which 20,022 were Gibraltarians, 3,811 other British subjects, 1,798 Moroccans and 1,072 of other nationalities. The estimated population on 31 December 2000 was 27,033. A new census of Gibraltar was taken on 12 November 2001, and the results were still being compiled when the present report was being completed.

II. Political developments

A. General

3. The 1969 Constitution guarantees basic civil and political rights and attributes. It assigns responsibility for local matters to a local Government. The United Kingdom, however, retains power over matters of defence, external affairs and internal security. The Governor, appointed by the sovereign of the United Kingdom, retains the power to rescind laws passed by the legislature. Furthermore, the Constitution reserves for the sovereign full power to make laws from time to time for the peace, order and good government of Gibraltar (including, without prejudice to the generality of the foregoing, laws amending or revoking that Constitution). A new Governor, Mr. David Durie, replaced outgoing Governor Sir Richard Luce in April 2000. A detailed discussion about the 1969 Constitution, including the positions of Spain and the United Kingdom, is contained in the report of the Special Committee to the General Assembly at its twenty-fourth session.²

4. Legislative authority is vested in a single House of Assembly consisting of 15 elected members. Executive authority is vested in a Council, which is

composed of the Governor, four ex officio members, the Chief Minister and four elected members, and which assists the Governor in an advisory capacity. The Council of Ministers is made up of the Chief Minister, members of the House of Assembly designated by the Chief Minister, and some elected members. The Council of Ministers, which acts as a cabinet, holds responsibility for specific domestic matters, with the Governor retaining the prerogative to intervene in support of his responsibilities for defence and external affairs.

5. The legal system of Gibraltar is based on the common law and statute law of England. Gibraltar retains its own court system, which includes lower courts (Court of First Instance, Coroner's Court, Magistrate's Court), a Court of Appeals and a Supreme Court. The Supreme Court has unlimited jurisdiction to hear and determine any civil or criminal proceedings. At present, it consists of the Chief Justice and an additional judge appointed by the Governor.

6. The United Kingdom's White Paper entitled "Partnership for Progress and Prosperity: Britain and the Overseas Territories",³ presented to Parliament in March 1999, spoke of each Territory's need for a constitutional framework to suit its own circumstances and stated that suggestions from Overseas Territory Governments for specific proposals for constitutional change would be considered carefully. In June 1999, Gibraltar's House of Assembly set up a Select Committee on constitutional reform. The Committee held meetings over a period of two years, and on 27 February 2002 the House of Assembly formally adopted a report on constitutional reform. The Chief Minister said that the object of the exercise had been to achieve a Constitution that "maximized self-government", in the language of the United Nations decolonization proposals, and modernized domestic institutions to reflect this. According to the local media, under the proposed changes the European Convention on Human Rights would be incorporated into the Constitution, with a mechanism for the automatic updating of fundamental individual rights; the office of the Governor would undergo changes, as would the House of Assembly, which would have more seats and be known as the Gibraltar Parliament; senior administrative and judicial appointments would no longer be made by the Governor; all crown lands other than those occupied by the Ministry of Defence would revert to the Gibraltar Government; and the

Constitution would refer to the right to self-determination not using "home-grown language" but rather that of United Nations instruments.⁴ On 10 April 2002, in response to a question asked in the House of Lords, Baroness Symons stated that any proposals received from the Gibraltar Government would be carefully considered.⁵

B. General elections

7. The last general elections in Gibraltar were held on 10 February 2000. Approximately 80 per cent of the 18,621 registered voters participated. The incumbent Gibraltar Social Democratic Party (GSD) obtained 58.35 per cent of the vote, followed by the Gibraltar Socialist Labour Party/Liberal Party alliance (GSLP/Liberal) with 40.57 per cent, and independent candidates, with 1.08 per cent. Consequently, GSD won eight seats in the Territorial House of Assembly and the GSLP/Liberal alliance seven seats. Peter Caruana, leader of the Gibraltar Social Democratic Party, obtained 8,747 votes and was appointed Chief Minister of Gibraltar. The GSLP/Liberal alliance, led by Joseph Bossano, forms the Opposition.⁶

C. Recent developments

8. The March 1999 United Kingdom White Paper stated that the relationship between the metropolitan Government and its territories must be seen "within the overall framework of modernization and reform, and within Britain's new international role". One of the Government's recommendations concerned the creation of an Overseas Territories Department within the Foreign and Commonwealth Office to ensure better links between the United Kingdom and its Territories. However, the paper indicated that, because Gibraltar was within the European Union as part of the United Kingdom membership under the Treaty of Rome — the only Overseas Territory with that status — it would continue to be handled principally by the Foreign and Commonwealth Office's European Departments, reporting to the Minister responsible for Europe.

9. The British Overseas Territories Bill, which confers British citizenship on British Overseas Territories citizens, completed its parliamentary process in 2001-2002. It received Royal Assent on 26 February 2002 and became the British Overseas Territories Act 2002 (see A/AC.109/2002/2/Add.1).

Under the British Nationality Act of 1981, British Overseas Territories citizens from Gibraltar are, upon application, entitled to be registered as British citizens. Accordingly, many Gibraltarians already possess British citizenship and thus have the right of abode in the United Kingdom.⁷ In July 2001, the Chief Minister of Gibraltar stated that for those Gibraltarians who already had or might in future want British citizenship, as opposed to British Overseas Territories citizenship, the new Bill represented a great improvement, as it gave "first class" British citizenship, without the need to apply to register, and in such a way as to be automatically passed on to children and future generations.⁸

10. The Government of the United Kingdom launched a Strategic Defence Review in May 1997 to examine most areas of the United Kingdom's defence. The resultant White Paper placed renewed emphasis on the rapid deployment of British forces in response to crisis and pointed out that Gibraltar's facilities provided an independent forward operating base for British forces in the Mediterranean and served as a transit base for vessels en route to the Middle East and elsewhere. According to a report published in June 1999 by the Foreign Affairs Committee of the United Kingdom House of Commons, over the last 15 years the level of military personnel in Gibraltar has declined from 10,000 to fewer than 1,000, and the level of civilian Ministry of Defence employees from 15,000 to 1,200. Defence-related expenditure has declined from 70 per cent of gross domestic product to 7 per cent.⁹

11. The main defence-related issue in Gibraltar in 2000-2001 was the arrival in May 2000 of HMS *Tireless*, a defective Royal Navy nuclear submarine, which required lengthy repairs in the Territory and raised environmental and health concerns in the region before it finally left in May 2001 (see A/AC.109/2001/10, para. 10). In July 2001, at a press conference during a visit by the British Secretary of Defence, the Chief Minister reiterated the Government's opposition to the use of Gibraltar for repairs to nuclear vessels; he also spoke of the transfer of Ministry of Defence lands and the importance of keeping directly employed workers to perform remaining functions on the military base.¹⁰

III. Economic conditions

A. General

12. Gibraltar has no known natural resources and lacks agricultural land. The industries, trades and services in the Territory mainly supply the needs of its population and the large number of visitors to the Territory. The economy of Gibraltar is largely dependent on tourism and the provision of financial services, such as banking, insurance, shipping and portfolio management. The legal tender currency of Gibraltar is the pound sterling. Government of Gibraltar currency notes in circulation on 31 March 2001 stood at £12.68 million. Inflation in October 2001 was running at an annual rate of 2.3 per cent.

B. Public finance

13. According to the administering Power, departmental revenue credited to the Consolidated Fund for the year ending on 31 March 2001 totalled £143.5 million and departmental expenditure amounted to £114.3 million, compared with £140.6 million and £104.9 million, respectively, in March 2000. The main sources of Consolidated Fund revenues were income tax, which totalled £53.6 million; import duties, which totalled £31.4 million; and general rates, which totalled £11.4 million. The main Consolidated Fund areas of expenditure from April 2000 to March 2001 were as follows: education and culture, £16.3 million; electricity, £12.7 million; social security and social services, £11.2 million; technical services, £10.9 million; health, £8.8 million; police, £7.1 million; tourism and transport, £5.9 million; building and works, £5.9 million; secretariat, £5.7 million; environment, £5.1 million; treasury, £4.1 million; customs, £2.9 million; fire service, £2.6 million; and trade, industry and communications, £2.3 million.

14. The income tax rates applicable to individuals resident in Gibraltar range from 20 per cent on the first £3,000 of taxable income to 48 per cent after the first £19,500 (see A/AC.109/2001/10, para. 16, for details of income tax and exemptions).

C. Trade

15. Provisional figures for 2000 show that total imports amounted to £659 million (up from £480 million in 1999) and total exports to £392 million (up from £248.5 million in 1999). Nearly half of Gibraltar's non-fuel imports originated from the United Kingdom. Other sources of imports included the Netherlands, Japan and Spain. Exports of goods of local origin were negligible. Exports consisted mainly of re-exports of petroleum and petroleum products supplied to ships. Import controls did not change during the period under review. Other than a few items of essential foodstuffs, gold bullion and gold coins, petrol, caravans, vessels, endangered species, fireworks and cigarettes, all goods can be imported under the Open General Licence.

D. Banking and finance

16. Gibraltar's international financial services sector stems from the enactment of the Companies (Taxation and Concessions) Ordinance in 1967, which made provision for a special tax regime for offshore companies. In 1997, the Gibraltar Finance Centre was established within the Department of Trade and Industry as the focal point for all financial activities in the Territory.¹¹ At the end of 2001, there were 20 banks authorized to conduct banking business in Gibraltar. As at 31 December 2001, there were also some 8,809 fully paid companies registered under the Companies (Taxation and Concession) Ordinance (see A/AC.109/2001/10, para. 19).

17. In recent years, the Government of Spain has expressed concern that European Union directives on financial regulation have not been fully implemented in Gibraltar, while the United Kingdom has provided different data (see A/AC.109/2001/10, para. 20). In July 2001, the European Commission decided to investigate Gibraltar's exempt and qualifying status legislation under European Union State Aid rules, a step that Gibraltar saw as a major challenge to its Finance Centre. Gibraltar initiated court proceedings against this decision, but the European Court of First Instance upheld the Commission's right to investigate. In his New Year Message, the Chief Minister stated that Gibraltar would soon have to eliminate the two main tax products on which the Finance Centre was based, namely, the tax exempt company and the

qualifying status company. In April 2001, a government spokesperson stated that the authorities had devised a reform of the company taxation law that would maintain government revenue but also allow the Centre to prosper in the face of the threats and challenges posed by the Organisation for Economic Cooperation and Development (OECD), the European Community State Aid litigation and the European Union Code of Conduct relating to business taxation. The Government was now in a position to consult both the United Kingdom and the European Commission on its proposals.¹²

18. A report issued in June 2000 by OECD included Gibraltar in a list of 35 jurisdictions that met the technical criteria for being tax havens.¹³ Following months of discussions between Gibraltar authorities and OECD and exchanges between OECD member States, on 28 February 2002 the Gibraltar Government agreed in writing to implement the principles required by OECD. Commenting on this, the Chief Minister said that many OECD norms were already included in Gibraltar's laws and administrative practices, and added, "Gibraltar supports the raising of standards and elimination of harmful practices in all financial centres across the world. It is essential that there should be a global level playing field, that is, uniformity of application."¹⁴ On 14 March, OECD announced that Gibraltar had made commitments to transparency and to implement an effective exchange of tax information with OECD countries by 31 December 2005, and would thus be removed from the list of uncooperative tax havens.¹⁵ The detailed list of commitments made by Gibraltar in order to comply with OECD requirements was published in both the Gibraltar and the Spanish media.¹⁶

E. Transportation, communications and utilities

19. According to the administering Power, arrivals in Gibraltar are by air, primarily from the United Kingdom; by sea, comprising ferry arrivals from Morocco and day-trip arrivals from cruise ships; and by land, comprising mainly day visitors arriving from Spain. Passenger arrivals for 2001 were as follows: air arrivals, 108,833; ferry arrivals, 146,622; cruise visitors, 117,183; and visitor arrivals by land, 7,048,378.

20. Regarding road transportation in and out of Gibraltar, in recent years the border issue has continued to be raised by the United Kingdom in contacts with the Spanish authorities (see A/AC.109/2001/10, para. 22). The United Kingdom submitted a complaint to the European Commission on the matter, and on 18 March 2002 the Commission issued the following statement: "The European Commission intends to close its investigation regarding the Gibraltar-Spanish border restrictions having found no evidence to legally support claims that the checks carried out by the Spanish authorities on travellers and on goods carried by the travellers at the crossing point in La Linea are disproportionate and therefore incompatible with Community law." On 19 March the Spanish Government expressed satisfaction at the Commission's decision and announced that, "taking into special consideration the mutual trust between the two Governments with a view to arriving at an overall agreement on all pending questions", Spain had decided to accede to a request from the British authorities to open up an additional lane for private cars driving into Spain as at 21 March. Spain added that "this measure will significantly speed up the passage of private vehicles at the border without altering compliance by the Spanish authorities with the control obligations imposed by European regulations at that point of entry into the Schengen area and the territory of the customs union".¹⁷

21. There are regular airline services linking Gibraltar to the United Kingdom and Morocco. In recent years, the issue of Gibraltar's airport was reported to be holding up European Commission aviation agreements on a "single European sky".¹⁸ On 5 September 2001, the European Parliament approved a motion that almost unanimously called for, inter alia, the European Union Council of Ministers to resolve the dispute over the Gibraltar airport. As a result, Gibraltar was suspended from the Single Sky package of measures. According to media reports, on 4 October thousands of Gibraltarians protested against this outcome.¹⁹ In his New Year address, the Chief Minister reiterated that Gibraltarians had been "disappointed and angered" by the United Kingdom's decision. In March 2002, the Gibraltar Government rejected as "illegal and politically unacceptable" further reported arrangements between Spain and the United Kingdom whereby both States would discuss which European Union aviation measures should be applied to the Territory and which should not.²⁰

22. As the Strait of Gibraltar is a principal water route between the Mediterranean Sea and the rest of the world, Gibraltar is used as a port by many long-distance liners and cargo ships. It has dry-dock facilities and a commercial ship repair yard. In 1997, there were 27 merchant vessels and 1,334 yachts registered in Gibraltar with a total gross registered tonnage of 700,000. Since the Gibraltar Ship Register joined the Category 1 Red Ensign Group (comprising the United Kingdom, Bermuda, the Cayman Islands, Gibraltar and the Isle of Man), the number of merchant vessels flying the Gibraltar flag has increased from 27 to 90.²¹

23. The local telephone system is operated by Gibraltar NYNEX Communications Ltd., a joint venture company formed in May 1990 and owned by the Government of Gibraltar and Verizon. At the end of 2001, the total number of exchange lines was 24,512. On 19 July 2001, the Government transposed European directives into the Gibraltar Telecommunications Ordinance 2000, thereby liberalizing communications and opening the industry to competition. On 26 September 2001, Gibraltar NYNEX Communications and Gibraltar Telecommunications International (the international carrier, known as Gibtel) came under common ownership, with the Gibraltar Government and Verizon as shareholders. According to the Chief Minister, these measures will lead to better and cheaper telecommunications in the Territory.

24. In 1996, Gibtel and Gibraltar NYNEX lodged formal complaints before the European Commission alleging that the Government of Spain was in breach of European competition law in its non-recognition of Gibraltar's international dialling code and its prevention of mobile roaming agreements.²² The European Commission has not acted on these complaints. The matter of telephone lines in the Territory was raised by the United Kingdom both bilaterally in its meetings with Spanish authorities and at the European Commission throughout 2000-2001. Spain maintained that it would not accede to Gibraltar's request for 1 million additional telephone lines (see A/AC.109/2001/10, para. 26). In August 2001, the Spanish Foreign Minister announced that Spain was considering providing "several tens of thousands of telephone lines" to Gibraltar as a sign of "good negotiating will" towards the United Kingdom. The Minister maintained that Spain could not accept unfair competition with telephone companies operating

in Spain.²³ The decision to allocate 70,000 lines to Gibraltar (additional to the 30,000 lines allocated to the Territory in 1986) was officially announced in Spain's *Boletín Oficial del Estado* on 8 November 2001. In January 2002, the Government of Gibraltar announced that it was rejecting the offer, as it was unacceptable politically, commercially and from a regulatory point of view.²⁴

F. Tourism

25. The total number of passengers arriving in Gibraltar in 2001 was 7.4 million, most of whom were day visitors. Hotel arrivals in 2000 were 48,949, up from 42,031 in 1999. There are an estimated 2,000 hotel beds in Gibraltar. The Gibraltar Hotel Association has stated that overall hotel occupancy remains at 65 per cent and has called for more widespread tourism advertising within the United Kingdom.²⁵

IV. Social conditions

A. Labour

26. According to the latest employment survey, the number of employees in Gibraltar was approximately 13,400. In October 2000, average weekly earnings for full-time adult male workers in the Territory were £258.39. At the end of 2001, the distribution of persons employed by the five largest sectors was as follows: banking and finance, 2,387; public administration and defence, 2,089; retail trade, 1,910; building and construction, 1,616; and medical and health services, 951. The total number of unemployed persons at the end of 2001 was estimated at 420. The standard weekly rate of unemployment benefit is £37.20, with an increase of £18.30 a week for any one dependent adult. A total of 545 claims were received during 2001, of which 525 were allowed. Legislation regulating labour and employment conditions in the Territory is reported to be in line with European Union directives. The Trade Unions and Trade Disputes Ordinance of Gibraltar contains provisions similar to those in the United Kingdom for the registration and organization of trade unions.

B. Human rights and the status of women

27. The Gibraltar (Constitution) Order of 1969 guarantees the protection of the fundamental rights and freedoms of the individual and the maintenance of a Supreme Court with unlimited jurisdiction to hear and determine any civil or criminal proceedings under any law and with such jurisdiction and powers as are conferred upon it by the Constitution of Gibraltar or any other law. Several major international human rights instruments have been extended to the Territory by the administering Power (see A/AC.109/2001/10, para. 33).

28. The status of women in Gibraltar, whether married or single, with or without family responsibilities, is similar to that enjoyed by women in the United Kingdom.

29. On 18 February 1999, the European Court of Human Rights determined that, with regard to Gibraltar, the United Kingdom had violated article 3 of Protocol 1 to the European Convention on Human Rights, concerning the right to participate in European parliamentary elections (see A/AC.109/2001/10, paras. 35-36). In a June 2001 resolution, the Council of Europe reminded the United Kingdom of its responsibility to abide by the European Court's ruling.²⁶ In November 2001, the United Kingdom Minister for Europe reiterated that his Government fully supported the right of the Gibraltar electorate to vote in European Parliament elections and was committed to achieving this in time for the 2004 elections.²⁷ In December 2001, and again in March 2002, Foreign Office Minister Baroness Symons offered the same assurance in the House of Lords, stating that the Government was now seeking legislative time to introduce domestic legislation for this purpose. In March she added that, as domestic legislation, this was not a matter for negotiation with Spain under the Brussels process.²⁸

C. Social security and welfare

30. For details of the contributory schemes of the Social Security system, see A/AC.109/2001/10, paragraph 40.

D. Public health

31. The Gibraltar Health Authority is responsible for providing health care in the Territory. The Authority operates a group practice medical contributory scheme and gives registered persons access to free medical treatment. The expenditure of the Gibraltar Health Authority for the period from 1 April 2000 to 31 March 2001 was £29.42 million, up from £28.4 million in the 1999-2000 period (for a description of the available medical facilities see A/AC.109/2001/10, paras. 42 and 43). Construction of a new 200-bed hospital at Europort is due to begin in April 2002, with completion anticipated for September 2003.²⁹ In July 2001, the Government of Gibraltar and the Junta de Andalucía (the Government of the Spanish autonomous region of Andalusia) finalized an agreement whereby Gibraltar patients would be eligible to receive medical treatment in hospitals in the nearby cities of La Línea, Algeciras, Cádiz and Málaga. The media recorded this initiative as a "historical breakthrough in cross-border relations".³⁰

E. Public education

32. The Education Department continues to be in charge of public education in Gibraltar. Expenditure on education as at the end of March 2001 was £16.32 million. As of 2001, there were 13 primary schools (11 of them Government-run, one private and one services school) with a total of 3,335 students enrolled. There were also four single-sex secondary schools: two Government-run schools, with a total of 1,794 students, and two private schools catering mainly for Jewish girls and boys. There is also a technical and vocational college with 235 enrolled students. The number of teachers employed in Gibraltar during the 2001/02 academic year is 381. All tertiary education is sponsored, and students satisfying entry criteria are entitled to scholarships to study in the United Kingdom. Currently, 605 Gibraltarians are reportedly pursuing university studies in the United Kingdom.

F. Crime and crime prevention

33. According to the Government of Gibraltar, the Royal Gibraltar Police (RGP) enjoys a very satisfactory level of manpower, funding and other resources relative to Gibraltar's size, law and order problems and

financial resources.³¹ From January to December 2001, 1,348 people were arrested for minor offences (such as those related to liquor, disorderly conduct and immigration violations). During the same period 739 people were arrested for serious crimes (such as those related to violence against the person, sexual offences, burglary and drugs). In the RGP report for 2000-2001, the Police Commissioner welcomed a downward trend in recorded serious crime but noted an increase in cocaine and ecstasy found in the Territory. The report also reflected a strengthening of cooperation between the RGP and the Spanish Policía Nacional and Guardia Civil, as well as the local police of the Spanish town of La Línea, as envisaged in the European Union Schengen Agreement.³²

V. Consideration by the United Nations

A. Special Committee on the Situation with regard to the Implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples

34. The Chief Minister of Gibraltar and representatives of Spain and the United Kingdom attended the Caribbean regional seminar to review political, economic and social conditions in the small island Non-Self-Governing Territories, held in Havana, Cuba, from 23 to 25 May 2001.

35. During the fifty-sixth session of the General Assembly the Special Committee considered the question of Gibraltar at its 4th and 8th meetings, on 19 and 29 July 2001, and had before it a working paper concerning the Territory (A/AC.109/2001/10). At its 4th meeting, the Special Committee heard a statement by the Chief Minister of Gibraltar, Peter Caruana. Statements were also made by Joseph Bossano, Leader of the Opposition in Gibraltar, and Bryan Zammit, Chairman of the United Nations Association of Gibraltar. The Special Committee acceded to the request of the delegation of Spain to participate in the Committee's consideration of the question of Gibraltar. The representative of Spain made a statement at the meeting. At the same meeting, following a statement by the representative of Papua New Guinea, the Special Committee decided to defer consideration of the question to a later meeting of the Committee. At the

8th meeting, statements were made by the representatives of Papua New Guinea, Grenada and Spain. The Special Committee decided to continue its consideration of the question at its next session, subject to any directives that the General Assembly might give in that connection at its fifty-sixth session, and, in order to facilitate consideration of the question by the Fourth Committee, to transmit the relevant documentation (A/56/23 (Part II)) to the Assembly.

B. Special Political and Decolonization Committee (Fourth Committee)

36. At its 5th meeting, on 10 October 2001, the Fourth Committee heard a statement by the Chief Minister of Gibraltar, Peter Caruana (see paras. 42-44), a statement by petitioner Joseph Bossano, Leader of the Opposition in Gibraltar, and a statement by petitioner Bryan Zammit, Chairman of the United Nations Association of Gibraltar (see A/C.4/56/SR.5). At its 6th meeting, on 12 October, the Committee heard a statement by the representative of Spain. At the same meeting, the representative of the United Kingdom spoke in exercise of the right of reply (see A/C.4/56/SR.6). At its 7th meeting, on 16 October 2001, the Committee had before it a draft resolution on the question of Gibraltar (A/C.4/56/L.4), submitted under agenda item 18. The Committee adopted the draft resolution without a vote, and statements were made by the representatives of Spain and the United Kingdom (see A/C.4/56/SR.7).

C. Action by the General Assembly

37. At the 49th plenary meeting of the General Assembly, on 12 November 2001 (see A/56/PV.49), Mr. Josep Piqué, Minister for Foreign Affairs of Spain, made a statement and referred to the question of Gibraltar (see para. 46). At the same meeting, the representative of the United Kingdom spoke in exercise of the right of reply (see para. 39).

38. At its 82nd plenary meeting, on 10 December 2001 (see A/56/PV.82), the General Assembly, on the recommendation of the Special Political and Decolonization Committee (Fourth Committee), adopted decision 56/421 without a vote. The decision reads as follows:

"The General Assembly, recalling its decision 55/427 of 8 December 2000, and recalling at the same time that the statement agreed to by the Governments of Spain and the United Kingdom of Great Britain and Northern Ireland at Brussels on 27 November 1984 stipulates, *inter alia*, the following:

'The establishment of a negotiating process aimed at overcoming all the differences between them over Gibraltar and at promoting cooperation on a mutually beneficial basis on economic, cultural, touristic, aviation, military and environmental matters. Both sides accept that the issues of sovereignty will be discussed in that process. The British Government will fully maintain its commitment to honour the wishes of the people of Gibraltar as set out in the preamble of the 1969 Constitution'.

"Takes note of the fact that, as part of this process, the Ministers for Foreign Affairs of Spain and of the United Kingdom of Great Britain and Northern Ireland hold annual meetings alternately in each capital, the most recent of which was held in London on 26 July 2001, and urges both Governments to continue their negotiations with the object of reaching a definitive solution to the problem of Gibraltar in the light of relevant resolutions of the General Assembly and in the spirit of the Charter of the United Nations."

VI. Future status of the Territory

A. Position of the administering Power

39. At the 49th plenary meeting of the General Assembly at its fifty-sixth session, on 12 November 2001, the representative of the United Kingdom, in exercise of the right of reply, said:

"I would like to respond briefly to the remarks made today by the Minister for Foreign Affairs of Spain about Gibraltar. The long-standing position of the British Government on this matter is well known, and we continue to stand by the commitment to the people of Gibraltar set out in the Preamble to the 1969

Constitution of Gibraltar, which enshrines the principle of consent of the people of Gibraltar to any change in sovereignty.

"The British Government shares Spain's view that issues relating to Gibraltar can be resolved only through dialogue such as that which we have recently resumed with Spain under the Brussels process. We attach importance to continuing this dialogue with Spain as a means to build a better future for the people of Gibraltar, and, like Spain, we would welcome the attendance of the Chief Minister of Gibraltar at future ministerial meetings" (A/56/PV.49, p. 44).

40. During the period under review, the position of the British Government on the status of Gibraltar and the Anglo-Spanish talks has been voiced on numerous occasions by Foreign Secretary Jack Straw and by Foreign Office Ministers in speeches, joint communiqués with Spain (see paras. 48-50) and articles. The issue has also been discussed on several occasions in both Houses of Parliament. On 4 February 2002, an article by Mr. Straw entitled "Seeking the Best for Gibraltar" was published in the *Gibraltar Chronicle*. In it he said, *inter alia*:

"I believe that the process of dialogue we are engaged in is the right way forward — not just for Britain but, most importantly, for Gibraltar itself. It cannot be right that the people of Gibraltar are forced to endure the sort of obstructions to everyday life which have become commonplace. Whether these be border delays, flight restrictions, access to telephone lines or even pigeon racing events, you have the right to be free of this disruption, and to enjoy the benefits and opportunities of a modern Europe of economic opportunity and free movement. It also cannot be right that the United Kingdom's relationship with a key European Union and NATO ally is persistently undermined by our dispute with Spain over Gibraltar."

41. On 5 February 2002, the Foreign Secretary spoke about the negotiations on Gibraltar to the House of Commons:

"There are four aspects to the approach that we have adopted: preserving Gibraltar's unique way of life; greater internal self-government for Gibraltar; practical benefits through cooperation

and putting the long-running dispute about sovereignty to rest.

"I am convinced that this dialogue represents the best way forward for the people of Gibraltar as well as for Spain and the United Kingdom. It must be better to try to settle differences through dialogue, and I am convinced that the people of Gibraltar have more to gain than to lose from the process. Moreover, they will not lose their British citizenship nor their traditional way of life. However, they will gain greater self-government and many practical benefits of a much more cooperative relationship with Spain and its people.

"I underline the commitment that any proposals affecting the sovereignty of Gibraltar will not and cannot be put into effect without the consent of the people of Gibraltar in a referendum.

"I want the Government of Gibraltar to be directly involved in the Brussels round talks. Yesterday, the British and Spanish Governments reiterated our invitation to Chief Minister Caruana to participate in the discussions on the basis of the Two Flags, Three Voices formula, in which he would have his own distinct voice as part of the British delegation.

"Lastly, there is nothing inevitable about the outcome of the discussions, but it is in all our interests to make a constructive effort to find a lasting solution to the problems — above all, one which we believe will be in the interests of the people of Gibraltar."³³

B. Position of the territorial Government

42. At the 5th meeting of the Fourth Committee, on 10 October 2001, the Chief Minister of Gibraltar, Mr. Caruana, said that he and his predecessor had appeared before the Committee annually since 1992. They had deployed arguments and made many pleas and requests, none of which had even received a response or commentary, still less been acted upon by either the Fourth Committee or the Special Committee. Instead, he added, the Fourth Committee limited itself to adopting the same annual, tired and self-evidently ineffective consensus resolution, which appeared to ignore everything stated to the Committee on behalf of

the people of Gibraltar. The real issue for the Committee was whether it believed that the mere existence of a territorial sovereignty dispute was sufficient to displace and override the right to self-determination of a colonial people.

43. In the process of decolonization, he said, there was no alternative to self-determination. Contrary to what Spain said, there did not exist, in international law or United Nations doctrine, any principle of territorial integrity that could be applied to a decolonization situation. The annual consensus resolution on Gibraltar was fundamentally flawed because it called for bilateral negotiations between the United Kingdom (the administering Power) and Spain (the territorial claimant) to resolve their differences over Gibraltar. Where did the people of Gibraltar and their wishes and rights to self-determination fit into that formula? The language of the resolution was one of territorial disputes and not one of decolonization and self-determination, ignoring the inalienable right of the people of Gibraltar.

44. In July, the United Kingdom and Spain jointly announced that they were giving "a fresh impetus" to discussions between them under the Brussels Agreement to resolve all the differences between them, he said. The people and the Government of Gibraltar did not turn their backs on dialogue with Spain. However, it had to be a dialogue in which Gibraltar could reasonably be expected to participate with safety and respect for its own position. It could not be a bilateral dialogue between the United Kingdom and Spain in which Gibraltar's presence and participation was relegated to some secondary or supporting role. Mr. Caruana asked that the Committee amend the annual consensus resolution so that it recognized the right of the people of Gibraltar to decolonization in accordance with the principle of self-determination and their right to a separate voice of their own in any dialogue about Gibraltar. Should there be any doubt in the Committee's mind about the right of the people of Gibraltar to self-determination, that question should be referred to the International Court of Justice for an advisory opinion. He also requested that the Special Committee visit Gibraltar to establish the true facts and circumstances about the Territory and its people.

45. During the period under review, the Chief Minister of Gibraltar has made numerous statements on the status of Gibraltar and the Territory's position with respect to the ongoing talks between Spain and the

United Kingdom. The views of the Gibraltar Government have been reflected in speeches, articles, media appearances and published letters, and also at public demonstrations held in Gibraltar on 4 October 2001 and 18 March 2002. At the demonstration held on 18 March, which is reported to have been attended by two thirds of the Gibraltarian population, Mr. Caruana read out the following declaration:

"We the people of Gibraltar here gathered declare as follows: 1) The future of Gibraltar both in practice and in principle, including our sovereignty, can only be decided by the people of Gibraltar in exercise of our right to self-determination. 2) We reject and condemn, as a betrayal of our rights and wishes as a people, any Anglo-Spanish declaration of agreement of principles which makes in-principle sovereignty or other concessions to Spain against our wishes. 3) We therefore call on the British Government not to enter into any such agreements and we say: Yes to reasonable dialogue; Yes to good-neighbourly European relations with Spain based on reasonable dialogue and mutual respect; and No to in-principle sovereignty and other concessions to Spain against our wishes."³⁴

C. Position of the Government of Spain

46. At the 49th plenary meeting of the General Assembly, on 12 November 2001 (see A/56/PV.49), Mr. Josep Piqué, Minister for Foreign Affairs of Spain, made a statement and referred to Gibraltar as follows:

"As has already been communicated to the Secretary-General, the United Kingdom and Spain agreed, on 26 July in London, to relaunch their talks within the framework of the Brussels Declaration, issuing to this end a communiqué in which they underlined their political will to overcome all of their differences over Gibraltar and to conclude these talks promptly and successfully for the benefit of all the parties involved. Furthermore, they invited the Chief Minister of Gibraltar to participate in ministerial meetings within the framework of this process".

47. On 26 March 2002 an open letter from the Spanish Minister for Foreign Affairs to the Gibraltarians was published in the *Gibraltar Chronicle*.

It included the following paragraphs regarding the position of Spain:

"I am aware of the existing mistrust after long years of difficult relations and mutual perceptions of misunderstanding. I understand and assume it. I am also aware that Spain's historical aspirations have been perceived by many of you as harassment and a threat to your traditions and way of life.

"I want to make this very clear: As you surely know, Spain's historical claim, which is fully justified, concerns the sovereignty over the territory and is — and intends to be — perfectly compatible with the interests of the Gibraltarians as free citizens in a democratic system. We have invited Chief Minister Mr. Caruana to attend the talks from the very start.

"Unfortunately, so far he has not attended. I honestly hope that he reconsiders his position. The task that we are fulfilling is for the benefit of all. In the first place, for the two countries that have the obligation to overcome a historical dispute that has disturbed their relations for the last three centuries. Its perpetuation makes no sense in the twenty-first century between States who are friends and allies, Members of the European Union and of NATO. Furthermore, this effort will also benefit you and your neighbours, that is, both the Gibraltarians and the people of the Campo.

"I can assure you that if we achieve the desired agreement with the United Kingdom you have nothing to fear from today's Spain. Quite the opposite: such an agreement will provide you with a future of understanding and harmony, of stability and security, of well-being and prosperity. Thus, the situation of uncertainty that stems from an unsustainable status quo — that can only deteriorate if such an agreement is not reached — would come to an end. Spain has shown that very deeply rooted conflicts can be overcome.

"Do, please, stop considering Spain as it was and, fortunately, no longer is. We enjoy full-fledged democracy, with all the freedoms and guarantees, which safeguard diversity and plurality within our country. You will agree with me that it is difficult to find a country that is

more respectful than Spain of its different cultures, languages and singularities, all of which are fully guaranteed by our Constitution. And I take on the commitment that any agreement we reach with the United Kingdom will take into account the indispensable respect of your singularities. Without any doubts or mental reservations whatsoever."

D. Anglo-Spanish negotiations

48. On 26 July 2001, the Ministers for Foreign Affairs of Spain, Josep Piqué, and of the United Kingdom, Jack Straw, relaunched talks on the subject of Gibraltar. At the end of a meeting held in London, they issued the following joint communiqué:

"The Ministers met under the terms of the Brussels Declaration made in the joint communiqué issue in November 1984. In the spirit of the good relations existing between the United Kingdom and Spain, both Ministers underlined their intention and political will to overcome all their differences over Gibraltar, and to make every effort to bring these talks to a successful and speedy conclusion to the benefit of all parties involved. Both sides discussed their approach to the practical issues of cooperation and sovereignty.

"They confirmed that Gibraltarian engagement will be an important element in carrying this process forward, and would welcome the attendance of the Chief Minister of Gibraltar at future and Ministerial meetings.

"It was agreed to hold further meetings, including a further Ministerial meeting in the Autumn to take forward the discussions."

49. On 20 November 2001, the Foreign Ministers met in Barcelona and issued the following joint communiqué:

"At our meeting today we confirmed our shared objective to continue our discussions about Gibraltar, in an atmosphere of trust and mutual cooperation, a commitment which Prime Minister Blair and Prime Minister Aznar endorsed when they met in London on 9 November. We are delighted that we are making good progress.

"We discussed the full range of issues set out in the November 1984 Brussels Communiqué. We did not want to draw conclusions today. Our aim is to conclude a comprehensive agreement by the summer of next year. This overall agreement will cover all outstanding issues, including those of cooperation and sovereignty. Our shared objective is a future where Gibraltar enjoys greater self-government and the opportunity to reap the full benefits of normal coexistence with the wider region. The guiding principle is to build a secure, stable and prosperous future for Gibraltar and a modern sustainable status, consistent with our common membership of NATO and the European Union. We also agreed on the need for rapid progress on key areas of cooperation. We asked officials to work up ideas and report to the next Ministerial meeting.

"While the British Government welcomed the Spanish decision to more than triple the number of telephone numbers for Gibraltar to 100,000, both Ministers agreed on the need for experts to continue discussions to resolve the other telecommunications issues. The British Government welcomed Spain's proposals to improve health-care facilities in Spain for Gibraltarians, and both Ministers agreed that this should be followed up quickly. The Ministers also agreed that bilateral discussions would continue to address the pensions issue.

"We agreed that the Government of Gibraltar had a very important contribution to make to our discussions. Gibraltar's voice should be heard. We reiterated the invitation which we issued to the Chief Minister of Gibraltar when we met in London on 26 July to attend future Brussels Process Ministerial meetings. His role will be fully respected and he will have the opportunity to contribute fully to the discussions. The Process would benefit greatly from the direct views of the Government of Gibraltar, and through the Government of the House of Assembly and public opinion in Gibraltar as a whole."

50. A third joint communiqué was issued after the meeting held in London, on 4 February 2002:

"At our meeting today we continued to make good progress in our discussions about

Gibraltar in the atmosphere of friendship and understanding which links the United Kingdom and Spain, reaffirming the full range of commitments that we assumed at our previous meetings in London and Barcelona. Our common aim remains to conclude a comprehensive agreement before the summer, covering all outstanding issues, including cooperation and sovereignty. Both Governments confirmed that their shared objective is to overcome their differences over Gibraltar and to ensure a secure future for Gibraltar in which Gibraltar can preserve its way of life and traditions, enjoy greater internal self-government, sustain and enhance its prosperity, and reap the full benefits of a harmonious and mutually beneficial cooperation in all fields together with the wider region.

"We reiterate our invitation to the Chief Minister of Gibraltar to attend future Brussels Process meetings so that he, and through him the Gibraltarians, can join the current dialogue and contribute to it to the benefit of Gibraltar. We confirmed that the Chief Minister is warmly invited to participate on the basis of the Two Flags, Three Voices formula, having his own and distinct voice as part of the British delegation.

"Our intention is that the comprehensive agreement we seek will offer the best framework for a secure, stable and prosperous future for Gibraltar. In that framework, our objective is that Gibraltar can enjoy enhanced powers of internal self-government allowing its Government and population to have a greater say in their lives. We will invite the Government of Gibraltar to develop together with us the relevant ideas on this objective. We also took forward our work on all the possible ways of enhancing cooperation to improve the quality of the daily lives of people in Gibraltar and the Campo region. The United Kingdom and Spain reaffirmed that the aim of the arrangements they seek is to promote the highest levels of fruitful cooperation within the wider region, favouring better standards of living and working conditions in Gibraltar and the Campo, and fluid communications with the region.

"The Spanish Government recalled the arrangements it had made to allocate a further 70,000 telephone numbers for Gibraltar and

reaffirmed that, as regards the technical responsibilities of the Spanish side, they are operational. It expressed its commitment to ensure that no obstacles prevent their immediate use for the benefit of all Gibraltarians. To that end, the United Kingdom and Spain agreed to engage in immediate talks to assess the situation and attain that objective. Both Governments also tackled the issue of pensions, a problem on which they will intensify their efforts to find a prompt solution consistent with the responsibilities of the public authorities involved."

E. Anglo-Gibraltarian discussions

51. During the period under review, there were regular meetings between United Kingdom and Gibraltarian officials. The United Kingdom has on many occasions stressed the need for Gibraltar to participate in the relaunched talks with Spain (see paras. 39-41).

52. Regarding Gibraltar's position, the Chief Minister spoke as follows before the House of Commons Foreign Affairs Committee on 28 November 2001:

"The British Government remains committed not to transfer sovereignty of Gibraltar, in whole or in part, contrary to the wishes of the people of Gibraltar. The people of Gibraltar will not agree to any such transfer. The Foreign Office well knows this, yet it continues to say that they will reach a comprehensive agreement by next summer. ... And so, I am expected to lend my support, through participation, in a process of dialogue from which will emerge a deal before next summer, over the terms of which I have no control and which will then be put to the people of my country, to accept or reject at the peril of 'being left behind' (whatever that might mean). That is simply not a viable or safe political process of dialogue. Nor does such status at talks in any way respect or reflect our right to self-determination."³⁵

Notes

- ¹ Information contained in the present working paper has been derived from information transmitted to the Secretary-General by the Government of the United Kingdom of Great Britain and Northern Ireland under Article 73 *e* of the Charter of the United Nations, on 2 April 2002, as well as from official documents of the Government of Spain and published sources.
- ² *Official Records of the General Assembly, Twenty-fourth Session, Supplement No. 23 (A/7623/Rev.1)*, vol. III, chap. XI, annex, paras. 7-23.
- ³ "Partnership for Progress and Prosperity: Britain and the Overseas Territories", White Paper submitted to the House of Commons on 17 March 1999 by the United Kingdom Secretary of State for Foreign and Commonwealth Affairs; reproduced in A/AC.109/1999/1, annex.
- ⁴ *Gibraltar Chronicle*, 28 February 2002.
- ⁵ Lords Hansard, Written Answer Text, 10 April 2002.
- ⁶ Gibraltar Elections 2000 web site (<http://www.gibraltar.gi/election>).
- ⁷ British Overseas Territories Bill, Explanatory Notes, House of Lords, 26 June 2001.
- ⁸ Government of Gibraltar press release, 11 July 2002.
- ⁹ Report by the Foreign Affairs Committee, House of Commons, 8 June 1999 (accessed at <http://www.parliament.uk/>).
- ¹⁰ *Gibraltar Chronicle*, 18 July 2001.
- ¹¹ <http://www.gibraltar.gov.gi/>.
- ¹² *Gibraltar Chronicle*, 5 April 2002.
- ¹³ Organisation for Economic Cooperation and Development, *Progress in Identifying and Eliminating Harmful Tax Practices*, June 2000.
- ¹⁴ *Gibraltar Chronicle*, 1 March 2002.
- ¹⁵ Agence France-Presse, 14 March 2002.
- ¹⁶ *Gibraltar Chronicle* and *El Pais*, 15 March 2002.
- ¹⁷ Press release of the Office of Diplomatic Information, Ministry of Foreign Affairs of Spain, 19 March 2002.
- ¹⁸ Reuters and *El Pais*, 8 March 2001.
- ¹⁹ Reuters, 4 October 2001.
- ²⁰ Government of Gibraltar press release, 22 March 2002, and *ABC*, 23 March 2002.
- ²¹ Government of Gibraltar press release, 13 December 2001.
- ²² Government of Gibraltar press release, 23 February 2001, and Select Committee on Foreign Affairs, Appendix 4, Memorandum submitted by the Foreign and Commonwealth Office.
- ²³ *ABC*, *El Mundo* and *El Pais*, 3 August 2001.
- ²⁴ Government of Gibraltar press release, 23 January 2002.
- ²⁵ www.chronicle.gi, 19 February 2002.
- ²⁶ *Gibraltar Chronicle*, 28 June 2001.
- ²⁷ Agence France-Presse, 29 November 2001.
- ²⁸ *Gibraltar Chronicle*, 6 December 2001, and www.publications.parliament.uk, 14 March 2002.
- ²⁹ Government of Gibraltar press release, 23 November 2001.
- ³⁰ *Gibraltar Chronicle*, 6 July 2001.
- ³¹ Government of Gibraltar press release, 15 May 2001.
- ³² *Gibraltar Chronicle*, 1 August 2001.
- ³³ Foreign and Commonwealth Office — News, 5 February 2002.
- ³⁴ *Gibraltar Chronicle*, 19 March 2002.
- ³⁵ Government of Gibraltar press release, 28 November 2001.